

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on
its own motion, seeking to amend Title
291, Chapter 7, Transmission Lines Rules
and Regulations, to adopt rules regarding
wires crossing any railroad track at
public highway crossings in the State
of Nebraska in accordance with Neb.
Rev. Stat. Section 75-702 to 75-724.

) Rule and Regulation No. 170

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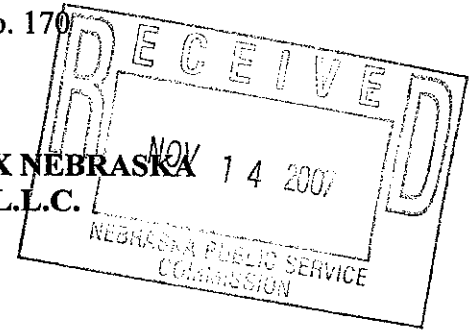
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**COMMENTS OF COX NEBRASKA
TELCOM, L.L.C.**



Cox Nebraska Telcom, LLC ("Cox") files these comments for the Commission's consideration in Rule and Regulation No. 170. Cox appreciates the opportunity to provide input on ways to improve and enhance the current interaction that takes place between utilities and the railroads when wires traverse over or under railroad tracks at public highway crossings. The Commission's inquiry on this topic is well-intentioned, but there are several flaws that must be addressed for the proposed rules to improve the present environment of utilities working with the railroads.

I. PROPOSED TIME PERIODS ARE TOO LONG.

Generally speaking, Cox finds the time periods set forth in the Commission's rulemaking to be too long and therefore, of little assistance. Cox now experiences approximately a ninety day turn-around when problems and delays arise. On a regular basis, agreements can be reached with the railroad in roughly thirty to sixty days. Under the proposed rules, by the time a petition is filed, a response filed, a hearing held and a decision rendered, it will take significantly longer than the present process to reach a resolution. This process will serve to discourage utilities from using the Commission as a

facilitator, and may actually motivate the railroads to prolong discussions knowing that under the Commission's rules, there is no quick solution.

II. REQUIRE THAT CONTACT INFORMATION BE POSTED.

Cox believes in lieu of the proposed rules, the Commission could simply require better communication from the railroads. Specifically, Cox encourages the Commission to create a rule requiring the railroads to keep contact information for the appropriate person handling crossing requests on the railroad's website. This would help eliminate the situations when a change in personnel delays the process. Presently, if the person Cox believes is responsible to handle crossing requests for the railroad is reassigned, changes jobs, or if a different person is given this responsibility, Cox must start over at the beginning with the new person. This problem is easily remedied by developing an electronic application that is a fully integrated process within the railroad's operations and the utilities' request is sent to a designated employee within the railroad for evaluation. This would not only assist the utilities, but reduce the present multiple communications that take place between the railroads and the utilities trying to identify the proper contact person.

III. REQUIRE THAT PRICING INFORMATION BE POSTED.

Cox also suggests that the railroads post pricing information on the railroad's internet website. Cox is not advocating or suggesting that the Commission *approve* pricing or that the railroad be required to file its pricing with the Commission. Cox merely seeks the posting of information online on how the railroad determines the prices it charges. There are cases when Cox may pay a few hundred dollars to place wire under

a railroad track and there are other instances when it costs thousands of dollars. Cox pays a bill to which it has no basis on which to rely except the railroad's quote. Furthermore, Cox does not know if the price it is charged by the railroad is the same that is charged to other utilities and providers for the same type of request. Finally, requiring the railroad to provide some minimal explanation about pricing on its website would enable utilities to evaluate up-front whether a crossing request would even be feasible or prudent to pursue. Under the present structure, there is no way of knowing in advance the potential costs involved.

IV. COMMENTS TO PROPOSED RULES.

As has been explained previously, Cox believes the time periods contained in the proposed rules are too long and will not assist utilities in reaching an agreement with the railroads. Cox would instead propose that merely requiring contact information from the railroads and publicly posting pricing information may alleviate much of the confusion that exists today. However, if the Commission wishes to pursue the proposed rules as presented, Cox offers the following comments and suggestions:

003.02 Procedures for Negotiation and Approval of Agreement.

Cox supports the concept of placing a time period on the negotiations that take place between the railroad and an entity requesting to cross a railroad track. However, sixty days is significantly too long. The more appropriate time, and still extremely reasonable is to lessen the period to thirty days. Currently, many agreements are resolved in approximately thirty days. Accordingly, it is unnecessary and counter-productive to offer a sixty day period in which to negotiate.

003.04 Failure to Reach Agreement Hearing.

As stated above, the period in which to negotiate should not exceed thirty days.

003.04D2 Action of the Commission

The proposed period of time for the Commission to hold a hearing in the rules is ninety days. This lengthy amount of time will only delay and prolong the process. The petition has been filed and the response has been rendered to the Commission for its consideration within fifteen days. A shorter time period is absolutely necessary; otherwise there is an *incentive* for a railroad to go to a hearing due to the length of time it takes to resolve a dispute.

The hearing should be held no later than thirty days after the petition is filed, unless both parties agree to a continuation. This time period affords the respondent the opportunity to reply, (fifteen days from the date the petition is filed under the proposed rules); and the Commission is afforded with roughly two weeks to find a hearing date on the schedule. Should both parties find an extension of time appropriate and reasonable, that option should be made available.

003.05 Submission of Agreement to Commission

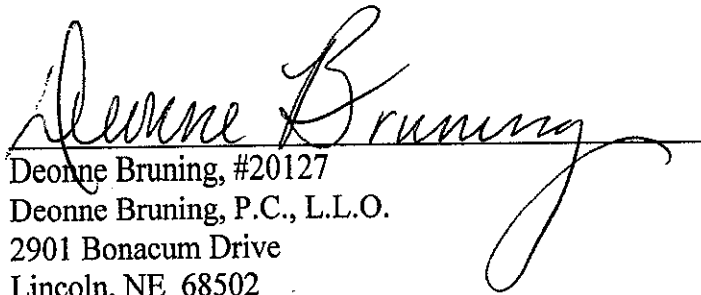
Cox does not object to filing its negotiated agreements with the Commission for filing or notification purposes, but disagrees that the Commission be allotted thirty days in which to 'approve' an agreement that has been negotiated and agreed to by the parties. Cox suggests the Commission align this filing requirement with the time period that exists for telecommunications tariffs, that is ten days.

Further, Cox also asks the Commission to elaborate on the standard of review that will be used to determine if an agreement is in the public interest. Companies may be able to include certain criteria or data that is expected by the Commission to meet a public interest requirement and as such, be able to avoid a hearing. However, without additional detail as to what information the Commission expects these filings to contain, companies are operating on a wait-and-see type basis. Over time it may become clear what the Commission deems to be in the public interest, but such information should be provided upfront and not learned through the experience of having agreements accepted and denied.

Finally, if a hearing is deemed to be necessary, efforts should be made to schedule a hearing as soon as practicable. Language should be included in the rules that require the expedient scheduling of a hearing. As has been stated previously, procedural delays should be minimized to the greatest extent practicable so that the utility may proceed as quickly as possible with its effort to improve service through expanding its plant.

Respectfully submitted this 14th day of November, 2007.

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